



S.A.(MD) No.640 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 02.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

**S.A.(MD) No.640 of 2023
and
C.M.P.(MD) No.14945 of 2023**

Muthulakshmi

...Appellant

Vs.

Rajendran (died)

Angusamy Servai @ VellaisamyServai (died)

1.Ravi@ Ravikumar

2.Arun@Arunkumar

3.Puvaneshwari

4.Kasivairavan

5.Rajeshwari

...Respondents

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree passed in A.S.No.03 of 2019 on the file of the Sub Court, Sivagangai, dated 17.10.2022 as confirmed in O.S.No.36 of 1999 on the file of the District Munsif cum Judicial Magistrate, Thiruppathur, dated 25.10.2018.

For Appellant : Mr.R.Balakrishnan

JUDGMENT



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This second appeal is filed challenging the concurrent Judgments and decrees passed in A.S.No.03 of 2019 on the file of the Sub Court, Sivagangai and in O.S.No.36 of 1999 on the file of the District Munsif cum Judicial Magistrate's Court, Thiruppathur.

2. It is seen from the plaint pleadings that the suit was originally filed for the reliefs of declaration of title in favour of the plaintiff in respect of the suit properties, recovery of possession and also for costs. Subsequently, an alternative prayer was included by way of amendment seeking the relief of partition of the plaintiff's 1/2 share in the suit properties.

3. The case of the plaintiff in brief is that the first item of the suit properties was purchased by the mother of the plaintiff, namely, Valliammal on 07.03.1967 and she had also purchased the second item of the suit properties on 25.08.1971. The first defendant and the plaintiff are the children of Valliammal and her husband Sankaralingam Servai. The first defendant was given in adoption to paternal junior uncle, namely, Angusamy Servai. The second defendant is the first defendant's wife. After adoption, the first defendant had gone to Singapore and settled there. The plaintiff is working in Southern Railway and staying in Thoothukudi. Valliammal died, without making any arrangements in respect of her properties, on 24.02.1997. Thereafter, the first defendant had tried to change



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the revenue records in respect of the suit properties in his name using his previous name Vellaisamy prior to adoption. In the suit filed in O.S.No.124 of 1992, the plaintiff was alone shown as the legal representative of Sankaralingam. The defendants had been threatening and venting out that the plaintiff has no right in the suit properties. In the said circumstances, the suit is filed for the aforesaid reliefs.

4. The defendants contested the claim of the plaintiff stating that the averments made with regard to adoption of the first defendant to Angusamy Servai is not correct. After the birth of the plaintiff in 1949, Sankaralingam had married another women, namely, Manimuthuammal and deserted the family. Valliammal found it difficult to take care of her two children. Sankaralingam's brother Angusamy took the first defendant to Singapore in 1956. First defendant had been working in Singapore and sending money to his mother for her and his brothers for their living and maintenance. He had also sent money and using the money sent by him, the suit properties were purchased in the name of Valliammal. The first defendant alone spent money for the educational and marriage expenses of the plaintiff. The revenue records stand in the name of the first defendant in respect of the suit properties

5. On considering the oral and documentary evidence produced before the trial Court, the learned trial Judge found that the suit properties were



purchased in the name of Valliammal and when the first defendant sets up the case that the suit properties were purchased in the name of Valliammal with the money sent by him, the first defendant has not properly pleaded and proved his case and in this view of the matter, decreed the suit for partition of half share in favour of the plaintiff. The first appellate Court had also confirmed the Judgment of the trial Court and dismissed the first appeal filed in A.S.No.3 of 1990. Thus, the appellant is before this Court by way of second appeal.

6. It is the submission of the learned counsel for the appellant that originally the suit was filed declaring that the suit properties absolutely belonged to the plaintiff and when he failed to establish the case of adoption, the plaint was amended by including the prayer for partition. There is no proper pleading for partition in the plaint. Out of love and affection, the first defendant sent money to his mother and using that money, the suit properties were purchased. Valliammal had no independent income for purchasing the suit properties. These facts have not been properly considered by the Courts below. That apart, it is his submission that there are other properties belong to the father of the plaintiff and first defendant, but that had not been included as suit properties and therefore, the suit is bad for partial partition. These aspects were not properly considered by the Courts below.

7. Considered the submissions of the learned counsel for the appellant



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and perused the records.

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8. Though the suit was originally filed for the relief of declaration of title in favour of the plaintiff in respect of the suit properties, it is not in dispute that the prayer was subsequently amended by including the alternative prayer seeking the relief of partition. Both the Courts below upon considering the oral and documentary evidence, found that the suit properties had been purchased in the name of mother Valliammal and concluded that as the legal heirs of mother Valliammal, the plaintiff and first defendant are each entitled to 1/2 share and accordingly, decreed the suit.

9. There is a quarrel with regard to relationship between the parties and the purchase of properties in the name of Valliammal. When the first defendant sets up the case that the suit properties were purchased with the money sent by him from Singapore, he is expected to make proper pleadings and produce evidence in support of his claim. This Court finds from the Judgment of the trial Court that there is no proper pleading in the written statement of the first defendant that the suit properties were purchased from the money sent by the first defendant in the name of Valliammal. It is also found that the first defendant had not produced any piece of evidence to show that he sent money to Valliammal and that money was used for purchasing the suit properties in the name of Valliammal



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for the benefit of first defendant. When this basic and requisite evidence is missing, no doubt, both the Courts below have rejected the first defendant's claim that the suit properties were purchased with the income sent by him from Singapore. This Court finds no reason to take a different view of the matter.

10. With regard to the submission of partial partition, this Court finds from the Judgment of the trial Court that though there is no specific plea was taken in the written statement of the first respondent with regard to partial partition, this issue was addressed and discussed. It is claimed that an extent of three cents in Survey No.375/91 in Thirupathur has been omitted to be included as the suit property. However, the trial Court found that this property belongs to Sankaralingam and his brothers, whereas the suit is filed in respect of mother's properties and therefore, the suit cannot be considered as bad for partial partition. As said earlier, there is no specific plea taken with regard to the allegation that the suit is bad for partial partition. Unless a specific plea is taken, we cannot expect the plaintiff to include the property, which was omitted to be shown as suit property. In the absence of specific plea, the plea of partial partition cannot be taken in the second appeal. This Court is of the considered view that the Courts below, on the basis of oral and documentary evidence, have rightly found that the plaintiff is entitled for 1/2 share in the suit properties.



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11. In *Sir Chunilal V. Mehta and Sons v. The Century Spinning Co.*

Ltd., 1962 reported in *AIR 1962 SC 1314*, the Hon'ble Supreme Court formulated what amounts to a substantial question of law, as follows:

1. Whether it is of general public importance (or)
2. Whether it directly and substantially affects the rights of parties *and if so*,
3. Whether it is *either* an open question (in the sense not finally settled by this Court or Privy Council or Federal Court) *(or)*
4. The question is not free from difficulty and calls for discussion of alternative views.

12. In the case before hand, the appellant has not made out any of the aforesaid grounds to formulate substantial question of law. There is no substantial question of law arises for consideration in this second appeal.

13. In fine, this Second Appeal is dismissed confirming the judgments of the Courts below. No costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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To

- 1.The Subordinate Judge,
Sivagangai.
- 2.The District Munsif cum Judicial Magistrate,
Thiruppathur.
- 3.The Section Officer (2 Copies),
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.



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G.CHANDRASEKHARAN, J.

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